("Through the structure of its government, and the character of those who exercise government[al] authority, a State defines itself as a sovereign."). In making these decisions, the States have consistently recognized the critical importance of protecting both the fact and the appearance of the integrity, impartiality, and independence of their judicial officers, and thereby maintaining public confidence in state judicial systems. "The legitimacy of the Judicial Branch ultimately depends on its reputation for impartiality and nonpartisanship." *Mistretta* v. *United States*, 488 U.S. 361, 407 (1989); see also *Chisom* v. *Roemer*, 501 U.S. 380, 401 n.29 (1991) ("it is the business of judges to be indifferent to popularity"); *In re Murchison*, 349 U.S. 133, 136 (1955) ("to perform its high function in the best way 'justice must satisfy the appearance of justice'") (quoting *Offutt* v. *United States*, 348 U.S. 11, 14 (1954)). When a State has chosen the method it believes is best designed to protect judicial integrity, impartiality, and independence, federal courts should be hesitant to set that choice aside.

The second principle involved in this matter is the First Amendment right of free speech (as incorporated through the due process clause of the Fourteenth Amendment), and specifically the right of candidates for elected office to communicate their views on issues of public interest to voters. See *Brown v. Hartlage*, 456 U.S. 45, 60 (1982); *Williams* v. *Rhodes*, 393 U.S. 23, 32 (1968); *Wood* v. *Georgia*, 370 U.S. 375, 395 (1962). This right is of paramount importance under the First Amendment. *Eu* v. *San Francisco County Democratic Cent. Comm.*, 489 U.S. 214, 222-23 (1989) (stating that "'debate on the qualifications of candidates'" is "'at the core of our electoral process and of the First Amendment freedoms'"); *Buckley* v. *Valeo*, 424 U.S. 1, 15 (1976) (First Amendment "has its fullest and most urgent application precisely to the conduct of campaigns for political office"). When a government entity oversteps permissible bounds in regulating the speech of a candidate for elected office, courts

must be prepared to intervene and vindicate the First Amendment free speech rights of the candidate.

These two fundamental principles potentially collide in cases, like this one, in which a State's regulation of the speech or conduct of judicial candidates designed to protect the integrity of the judiciary is challenged on First Amendment grounds. Because of the importance of these two principles, the calibration required to decide these cases must be both fine and definitive. An error in either direction will inevitably cause significant harm to an important public interest, whether it is to State sovereignty (and the efforts by States to protect the integrity, impartiality, and independence of their judicial officers) or to free speech.

Four years ago, in *Republican Party of Minnesota* v. *White*, 536 U.S. 765 (2002), this Court addressed a Minnesota regulation of state judicial candidates under a provision known as the "announce" clause, which prohibited a candidate from "'announc[ing] his or her views on disputed legal or political issues.'" *Id.* at 768. The Court applied strict scrutiny to the regulation and held that it was not narrowly tailored to serve a compelling state interest. *Id.* at 774-82.

The Court made it clear in *White* that its holding was a narrow one. For example, twice the Court stated that the petitioner did not challenge, and so the Court was not addressing, Minnesota's narrower "pledges or promises" clause, which prohibits a candidate from making "'pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office.'" *Id.* at 770, 780.[2] Nor did the Court address the "commit" clause contained in Canon 5 of the ABA Model Code of Judicial Conduct and in

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[2] According to the dissenting justices, the petitioner conceded that the "pledges or promises" clause is constitutionally valid. *White*, 536 U.S. at 813 (Ginsburg, J., dissenting) ("All parties to this case agree that, whatever the validity of the Announce Clause, the State may constitutionally prohibit judicial candidates from pledging or promising certain results.").

many state regulations, which prohibits a candidate from making "'statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court.'" *Id.* at 773 n.5. And, in response to the dissenting opinion of Justice Ginsburg, the Court emphasized that the holding of *White* was narrow and that the Court's opinion did not "assert" or "imply that the First Amendment requires campaigns for judicial office to sound the same as those for legislative office." *Id.* at 783.

Notwithstanding the Court's statements about the narrow scope of the holding in *White*, the lower courts have struggled to apply *White* to other types of State regulation of judicial candidates. In general terms, two separate and distinct lines of authority have arisen post-*White*.

First, some judges and State regulators have interpreted *White* narrowly, often citing the Court's statements in *White* about the limited scope of its holding. As a result, State regulation of the speech and conduct of judicial candidates (other than the "announce" clause) has been upheld.

For example, in *In re Kinsey*, 842 So. 2d 77 (Fla.) (per curiam), *cert. deniea*, 540 U.S. 825 (2003), the Florida Supreme Court disciplined an elected County Court Judge based upon statements that she made as a candidate. During her campaign, the judge stated that she would "'help law enforcement by putting criminals ... behind bars,'" would take the testimony of police officers "'seriously,'" would "'support our valiant law enforcement officers,'" and would "'bend over backward'" to assist crime victims. *Id.* at 80-82, 87-88. The court found that these statements and others made by the judge during the campaign violated both the "pledges or promise" clause and the "commit" clause of the Florida Code of Judicial Conduct and rejected the judge's First Amendment challenge to the Code. The court stated that the Code does not include the "announce" clause invalidated in *White* and that it both "serves a compelling state interest in preserving the integrity of our judiciary and maintaining the

public's confidence in an impartial judiciary" and is narrowly tailored to serve that interest. *Id.* at 87. The court explained, "[I]t would be inconsistent with our system of government if a judicial candidate could campaign on a platform that he or she would automatically give more credence to the testimony of certain witnesses or rule in a predetermined manner in a case which was heading to court." *Id.*

Other authorities in this line include two decisions of the New York Court of Appeals decided on the same day, *In re Watson*, 794 N.E.2d 1 (N.Y. 2003) (per curiam) (imposing discipline for violating restriction on political activity) and *In re Raab*, 793 N.E.2d 1287 (N.Y. 2003) (per curiam) (imposing discipline for violating "pledges or promises" clause by making statements that indicated a bias against criminal defendants). In both cases the court held that the regulations on judicial candidates satisfied strict scrutiny, and in both cases the court emphasized the limited scope of *White*. As the New York court explained:

> The Court [in *White*] did not declare ... that judicial candidates must be treated the same as nonjudicial candidates or that their political activity or speech may not be legitimately circumscribed. To the contrary, the Court distinguished Minnesota's announce clause from other rules restricting the speech of judicial candidates, taking no position on the validity of other judicial conduct provisions.

Id. at 1290. *Accord Watson*, 794 N.E.2d at 6 ("New York's Rules Governing Judicial Conduct do not include a provision analogous to Minnesota's 'announce clause.' The pledges or promises clause in this case is significantly different from the announce clause in that it does not prohibit judicial candidates from articulating their views on legal issues. Indeed, *White* itself distinguished the announcements at issue in that case

from 'pledges or promises,' which are covered by another Minnesota rule." (citation omitted)).[3]

In contrast, in a separate line of authority, lower federal courts have generally interpreted *White* broadly to prohibit all challenged restrictions on the speech and conduct of judicial candidates. For example, in *Weaver* v. *Bonner*, 309 F.3d 1312 (11th Cir. 2002), the court held that Georgia's rules against personally soliciting either campaign contributions or public support and against making false or misleading campaign statements were inconsistent with the First Amendment. The court rejected the State's argument that it was entitled to impose greater restrictions on candidates for judicial office than it could for other categories of candidates, concluding that such an argument was foreclosed by *White*. *Id.* at 1320-21. As the court explained, "[T]he Supreme Court's decision in *White* suggests that the standard for judicial elections should be the same as the standard for legislative and executive elections." *Id.* at 1321.

Similarly, in *North Dakota Family Alliance* v. *Bader*, 361 F. Supp. 2d 1021 (D.N.D. 2005), a district court held that *White* required the invalidation of North Dakota's "pledges

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[3] *See also, e.g.*, JE-105 Op. Ethics Comm. of the Ky. Judiciary (Apr. 30, 2004), *available at* http://www.kycourts.net/AOC/SLL/JESearch/JE-105.pdf (stating that judicial candidates may not identify themselves as members of a political party); State of Ga., *Code of Judicial Conduct*, Canon 7(B)(1)(b) (issued Jan. 7, 2004) (prohibiting judicial candidates from making "statements that commit the candidate with respect to issues likely to come before the court"); 1-02 Op. Ind. Comm'n on Judicial Qualifications, *available at* http://www.in.gov/judiciary/judqual/opinions.html (last modified Dec. 29, 2005) (stating the "commit" clause and "pledge or promise" restrictions are still valid and enforceable after *White*); 2002-8 Op. Ohio Bd. of Comm'rs on Grievances & Discipline (Aug. 9, 2002), *available at* http://www.sconet.state.oh.us/BOC/Advisory_Opinions/2002//op_02-008.doc (same); *In re Enforcement of Rule 2.03, Canon 5.B(1)(c)* (Mo. July 18, 2002) (en banc order) (same for "pledges or promises" clause restriction).

and promises" clause and its "commitment" clause. That court observed:

> A careful reading of the majority opinion in *White* makes it clear that the "pledges and promises clause" and the "commitment clause" are not long for this world. The justifications offered in support of the "announce clause" in Minnesota – the preservation of an impartial judiciary and the appearance of an impartial judiciary – are the same justifications advanced by North Dakota in support of the "commitment clause" and the "pledges and promises clause." In *White*, those justifications were found to be lacking and insufficient under a strict scrutiny analysis.

Id. at 1039; see also *id.* at 1041 ("This Court is of the opinion that there is little, if any, distinction between the 'announce clause' which was struck down by the United States Supreme Court in *White*, and the 'commitment clause' and the 'pledges and promises clause' contained in ... the North Dakota Code of Judicial Conduct.").

The competing lines of lower court authority interpreting the *White* decision cannot be reconciled. As the district court stated in *Bader*,

> To say that there is considerable uncertainty regarding the scope of the Supreme Court's decision in *White* is an understatement.... It has caused, and will continue to cause, considerable uncertainty and consternation on the part of judicial candidates.

Id. at 1041-42; see also *id.* at 1035 ("Suffice it to say that the *White* decision has raised far more questions than it answered, particularly for those entities charged with establishing ethical standards for the judiciary.").

The opinions below in this matter, which address challenges to Minnesota's restrictions on partisan activity and direct solicitation of campaign contributions, illustrate the

irreconcilable nature of these two lines of authority. In the Eighth Circuit's panel opinion, for example, the majority adopted the narrow interpretation of *White*. The panel quoted the language from the Court's opinion, noted above, that the Court did not "'assert [or] imply that the First Amendment requires campaigns for judicial office to sound the same as those for legislative office.'" *Republican Party of Minn.* v. *White*, 361 F.3d 1035, 1049 (8th Cir. 2004) (quoting *White*, 536 U.S. at 783), *vacated en banc*, Nos. 99-4021 et al. (8th Cir. May 25, 2004). The panel majority also noted with skepticism the Eleventh Circuit's statement in *Weaver* that, post-*White*, there could not be "'greater restrictions on speech during judicial campaigns than during other types of campaigns.'" *Id.* (quoting *Weaver*, 309 F.3d at 1321).

On rehearing *en banc*, however, the Eighth Circuit adopted the opposite interpretation of *White*. Reading *White* broadly, the court concluded that Minnesota's restrictions on partisan activity and direct solicitation were not narrowly tailored to serve any compelling interest identified by the State; thus, the restrictions were inconsistent with the First Amendment. *Republican Party of Minn.* v. *White*, 416 F.3d 738, 749-66 (8th Cir. 2005) (en banc).

Accordingly, the proceedings below demonstrate plainly the profound uncertainty regarding the proper application of *White* in contexts other than the "announce" clause. Moreover, the regulations at issue here – restrictions on the direct solicitation of campaign contributions and on partisan activity – have been adopted in similar form in many other States and are central to the States' interests in protecting the judiciary's integrity. This is a critical area of uncertainty among lower courts post-*White*, and this case provides an excellent vehicle for the Court to provide needed guidance to courts and regulators who are struggling to balance properly

the interests impacted by efforts to regulate the speech and conduct of candidates in judicial elections in the future.[4]

The opportunity to provide further guidance in this area regarding issues not directly resolved by *White* is particularly important and urgent because the confusion and uncertainty reflected by the split in authority described above affects not only courts but also the decisions being made on a daily basis by candidates campaigning for judicial office and by the State regulators who enforce the judicial conduct codes. The current state of the law is unclear, and thus the rules are followed, applied, and enforced inconsistently. As a result, with each election cycle that passes without additional guidance from this Court, the public interest in fair, ethical, and open elections for judicial offices inevitably suffers irreparable harm.[5]

Finally, it is inescapable that one of the lines of authority described above is incorrect. With every election cycle that passes under the current state of the law, either (a) the First Amendment right of judicial candidates to engage in campaign activity is being improperly restricted in some

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[4] *See* 21 Laws. Man. on Prof. Conduct (ABA/BNA) 658 (Dec. 28, 2005) ("If the [C]ourt grants review [in this matter], it will have the opportunity to clarify what, if any, restrictions on a judge's speech and campaigning are permitted under the First Amendment. This may prove crucial to the ... work [of the ABA Joint Commission to Evaluate the Model Code of Judicial Conduct], as the commission is crafting rules on political speech and conduct amid a body of constitutional jurisprudence that may still be evolving.").

[5] The confusion and uncertainty is particularly apparent in a State such as Florida, in which, as explained above, the Eleventh Circuit has stated in broad terms that the State may not regulate judicial elections to a greater degree than it regulates other elections, but the State Supreme Court continues to enforce rules that impose unique restrictions on candidates for judicial office. As a result, it is almost impossible in Florida for judicial candidates or State enforcement authorities to know whether the existing State restrictions on the campaign activities of candidates for judicial office are valid and consistent with the First Amendment.

States or (b) an overly broad interpretation of the rights guaranteed by the First Amendment is improperly infringing upon other States' sovereign rights to enforce restrictions that those States deem necessary to ensure the integrity of their judicial systems.

While the *amici curiae* at this point are not prepared to opine as to how the relevant balance should be struck, they are convinced that important and fundamental constitutional rights are at stake. Only prompt review by this Court now can resolve the established conflict in lower court decisions, provide greater guidance and certainty to both judicial candidates and State regulators, and end the ongoing violation of either the First Amendment or State sovereignty.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

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No. 05-566

In The
Supreme Court of the United States

MARTHA HOLTON DIMICK, CHAIRPERSON, MINNESOTA BOARD ON JUDICIAL STANDARDS, *ET AL.*,

Petitioners,

v.

REPUBLICAN PARTY OF MINNESOTA, *ET AL.*,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

MOTION OF THE MISSOURI BAR FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF *AMICUS CURIAE* OF THE MISSOURI BAR IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

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MOTION OF THE MISSOURI BAR FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND ITS BRIEF *AMICUS CURIAE* IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

The Missouri Bar moves for leave to file a brief *amicus curiae* in support of Petitioners, as provided in Rule 37. The Petitioners consent to this request. The Respondents do not consent.

The Missouri Bar is a unified bar association consisting of twenty-eight thousand (28,000) attorneys licensed to practice in the State of Missouri. Mo.R.Civ.P. 7.01. The Missouri Bar has a strong interest in the validity of the Minnesota Judicial Campaign Contribution Solicitation Clause ("Solicitation Clause") in Minn. Code. of Jud. Con. Canon 5(B)(2). Missouri has an analogous rule. *See* Mo.R.Civ.P. 2.03, Canon 5(B)(2). The Minnesota clause and the analogous Missouri clause describe how a candidate for judicial office may solicit campaign funds. Both provisions prohibit judicial candidates from personally soliciting campaign funds. Minn. Code. of Jud. Con. Canon 5(B)(2); *see* Mo.R.Civ.P. 2.03, Canon 5(B)(2). Both states limit the solicitation of campaign contributions to judicial campaign committees. *Id.*

The Eighth Circuit, in *Republican Party of Minnesota v. White*, 416 F.3d 738 (8th Cir. 2005), held the Minnesota Solicitation Clause – as well as the Partisan Activities Clause contained in the Minnesota Code of Judicial Conduct Canon 5(B)(2) – unconstitutional, finding both to be fatally underinclusive. The Eighth Circuit's decision calls into question the constitutionality of the analogous Missouri Solicitation Clause. Any decision by this Court may affect the processes for selecting judges in Missouri. While the Petitioners will present two (2) issues to the

Court, the validity of the Minnesota Partisan Activities Clause and the Minnesota Solicitation Clause, The Missouri Bar is only concerned with the Solicitation Clause.

Since the middle of the last century, Missouri has selected all appellate judges and trial court judges in urban areas through the Missouri Nonpartisan Court Plan, a merit system known nationally as "The Missouri Plan." Mo. Const. Art 5 Sec. 25(a-g). A selection panel screens candidates for these positions and submits three (3) nominees to the Governor of Missouri, who then makes a selection. *Id.* The appointee then serves until the next general election, when he or she must stand for a retention election. *Id.* at Sec. 25(c)(1). In rural parts of the state, trial judges are elected in contested, partisan elections. Mo. Rev. Stat. § 478.010.1 (2000); Mo. Const. Art. 5, Sec. 27. All judicial candidates in Missouri, including those running in partisan elections and those standing for retention under the Nonpartisan Court Plan, are bound by Missouri's Solicitation Clause, which prohibits the personal solicitation of campaign contributions. Mo.R.Civ.P. 2.03, Canon 5(B)(2).

The Petitioners will necessarily have to divide their focus between the Partisan Activities Clause and the Solicitation Clause. The Missouri Bar will focus on the validity of the Solicitation Clause and the wide-ranging impact the Eighth Circuit's decision will have on judicial elections in Missouri and other states with similar clauses. The Missouri Bar contends that prohibiting direct solicitation of campaign contributions by judges is a narrowly tailored restriction addressing a compelling state interest, warranting this Court to grant the petition for certiorari and, ultimately, to overturn the Eighth Circuit's decision.

The Missouri Bar can contribute to the Court's understanding of the effect of the invalidation of the Minnesota Solicitation Clause from the perspective of a state that has both contested judicial elections and retention elections. The Missouri Bar submits its brief in support of Petitioners' Petition for Writ of Certiorari with this Motion.

Respectfully submitted,

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INTEREST OF *AMICUS CURIAE*[1]

The Missouri Bar is a unified bar association comprised of twenty-eight thousand (28,000) attorneys licensed to practice in the State of Missouri. Mo.R.Civ.P. 7.01. The Missouri Bar has a strong interest in this case as a result of the Eighth Circuit's decision in *Republican Party of Minnesota v. White*, 416 F.3d 738 (8th Cir. 2005), which invalidated the Solicitation Clause in Minnesota Code of Judicial Conduct Canon 5(B)(2).[2] Missouri has an analogous rule, Mo.R.Civ.P. 2.03, Canon 5(B)(2), which may be subject to challenge as a result of the Eighth Circuit's decision. This Canon governs campaign fundraising for the

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[1] The Petitioners have consented to the filing of this brief.

Counsel for a party did not author this brief in whole or in part. No person or entity, other than the *Amicus Curiae*, its members, or its counsel made a monetary contribution to the preparation and submission of this brief.

[2] Minnesota Canon 5(B)(2) provides, in pertinent part:

> *A candidate shall not personally solicit or accept campaign contributions* or solicit publicly stated support. A candidate may, however, establish committees to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept campaign contributions, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. Such committees are not prohibited from soliciting and accepting campaign contributions and public support from lawyers, but shall not seek, accept or use political organization endorsements. Such committees shall not disclose to the candidate the identity of campaign contributors nor shall the committee disclose to the candidate the identity of those who were solicited for contribution or stated public support and refused such solicitation. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others. [emphasis added].

elections of judges at all levels of the Missouri courts. The Missouri Bar urges this Court to grant Petitioners' Petition for Writ of Certiorari, to overturn the decision of the Eighth Circuit and to find that the Minnesota Solicitation Clause is constitutional. This result would help protect the Missouri systems of electing and retaining judges.

SUMMARY OF ARGUMENT

The Eighth Circuit, in *Republican Party of Minnesota v. White*, 416 F.3d 738 (8th Cir. 2005), found that the Minnesota Code of Judicial Conduct Canon 5(B)(2), the Solicitation Clause, was not narrowly tailored to address a compelling state interest. The Eighth Circuit based its decision on an incorrect and overly expansive reading of the U.S. Supreme Court's decision regarding the Minnesota Announce Clause in *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002). The Minnesota Solicitation Clause is, in fact, narrowly tailored to further the compelling interest of maintaining the appearance of judicial impartiality. The U.S. Supreme Court should grant Minnesota's Petition, reverse the decision of the U.S. Court of Appeals for the Eighth Circuit, and affirm the validity of the Minnesota Solicitation Clause.

ARGUMENT

The Eighth Circuit determined that both the Minnesota Partisan Activities Clause and the Solicitation Clause violated the First Amendment to the United States Constitution. The Missouri Bar has an interest in the validity of the Minnesota Solicitation Clause and will

limit its argument to that issue. In invalidating the Minnesota Solicitation Clause, the Eighth Circuit applied strict scrutiny based upon a belief that the restriction was based on the subject matter and political nature of the speech. *White*, 416 F.3d at 763-64. The Eighth Circuit then considered whether the portions of the Solicitation Clause attacked by Respondents promote an interest in judicial impartiality, based both on lack of bias toward a party to a case and "open-mindedness." *Id.* at 765-66. The Court found that Minnesota had not narrowly tailored the challenged portions of the Solicitation Clause to promote these interests. *Id.* Consequently, the Eighth Circuit held that the challenged portions of the Solicitation Clause violated the First Amendment. *Id.*

In reaching this decision, the Eighth Circuit placed great emphasis on the campaign committee system contained in the Solicitation Clause, an aspect of the Minnesota rule that was not challenged by the Respondents. *Id.* at 765. It stated that the Respondents "challenge only the fact that they cannot solicit contributions from large groups and cannot, through their campaign committees, transmit solicitation messages above their personal signatures." *Id.* at 764-65. The court conceded that prohibiting judges and candidates for judicial office "from directly soliciting money from individuals who may come before them certainly addresses a compelling state interest in impartiality as to parties to a particular case." *Id.* at 765. However, the court then found that if the challenged portions of the Solicitation Clause were struck down, there was no danger of a judge or judicial candidate having an improper interest in a litigant's case because that judge or candidate would not know who contributed or was asked to contribute to his or her campaign. *Id.* Under the Minnesota rule,

all contributions must be made to a campaign committee and that committee cannot disclose to the candidate who makes contributions and who does not. *Id.* The Eighth Circuit found that, because of the campaign committee's role, the challenged portions of the Solicitation Clause were not narrowly tailored to promote the interest of an unbiased judiciary. *Id.* The Court further stated that a candidate's signature on a letter, either handwritten or mechanical, does not "magically endow [the candidate] with a power to divine, first, to whom that letter was sent, and second, whether that person contributed to the campaign or balked at the request." *Id.* It also stated that it is unlikely that the candidate will know who has either accepted or declined his solicitation of funds. *Id.* Therefore, the Court found that the challenged portions of the Solicitation Clause did not pass muster. *Id.* at 765-66.

Next, the Court considered whether the challenged portions of the Solicitation Clause were narrowly tailored to serving an interest in "open-mindedness." *Id.* at 766. It found that signing letters or asking a large group of voters for contributions would not damage the judge's "'willing[ness] to consider views that oppose his preconceptions, and remain open to persuasion, when the issues arise in a pending case.'" *Id.* Noting the presence of the campaign committees and the shield they provide to the identities of contributors or those solicited, the Court found that it challenged credulity to believe that the candidate would not remain open-minded. *Id.* Accordingly, it found that the Solicitation Clause was not narrowly tailored to a compelling state interest, and, therefore, did not pass muster under strict scrutiny. *Id.*

A. Compelling State Interest.

As noted by Petitioners, the Eighth Circuit completely failed to address the appearance of partiality created by the personal solicitation of campaign contributions and, instead, focused only on actual corruption. *See* Petition for a Writ of Certiorari, pages 25-26. Contrary to the Eighth Circuit's determination, Minnesota's Solicitation Clause is narrowly tailored to address a compelling state interest. The Missouri Bar contends that not only must there be actual impartiality, there must be the appearance of impartiality. The public will only respect the decisions of the judiciary if there is no question as to the courts' integrity.

> Courts, in our system, elaborate principles of law in the course of resolving disputes. The power and the prerogative of a court to perform this function rest, in the end, upon the respect accorded to its judgments. The citizen's respect for judgments depends in turn upon the issuing court's absolute probity. Judicial integrity is, in consequence, a state interest of the highest order.

Republican Party of Minnesota v. White, 536 U.S. 765, 793 (2002) (Kennedy, J., concurring). Even the Eleventh Circuit in *Weaver v. Bonner*, 309 F.3d 1312 (11th Cir. 2002), conceded that judicial impartiality is a compelling state interest. *Id.* at 1322.

The appearance of impartiality is a necessary corollary to judicial integrity. Any appearance of impropriety detracts from the public's confidence in judicial decision making. When a judge or judicial candidate personally solicits campaign funds, whether from the bench or via mass appeal, it gives the appearance to the public that justice is for sale. The public will necessarily believe that anyone willing to make a substantial donation to a

judicial candidate must expect some sort of return on that "investment." This appearance of a quid pro quo is even more troubling in the context of judicial elections than others because of the nature of the judiciary. Judges make decisions affecting anywhere from one person to millions. The public expects these decisions to be based on the law. If judges personally solicit contributions for their continued livelihood, some citizens will question those judges' impartiality. This concern would only be heightened in high-profile cases and would lead to invariable media speculation and research into a judge's donor list. This fundraising regime would drastically affect the appearance of judicial integrity and, hence, would lead to a loss of public confidence in judicial decision-making.

Allowing the personal solicitation by judges and judicial candidates of campaign funds would place lawyers in especially untenable situations. Such a judicial fundraising apparatus would facilitate arguments by cynics that the lawyers and litigants with the most money might receive different justice than those of more modest circumstances. Allowing judges to solicit campaign funds directly, as opposed to through committees, would also undoubtedly favor incumbents.

B. Narrowly Tailored.

The Eighth Circuit determined that the challenged portions of the Solicitation Clause were not narrowly tailored to address the issues of lack of bias for or against a party to a case and open-mindedness. *White*, 416 F.3d at 765-67. In doing so, it focused primarily on the fact that the campaign committees shielded the judge or judicial candidate from knowing the identities of individual donors, even if the candidate personally solicited a large group of